

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF:

THE ALFRED P. SANDERS TRUST
Sanders Aviation
Superfund Site
Tempe, Arizona,

Respondent.

U.S. EPA Docket No. 99-06(A)

FIRST AMENDMENT TO
AGREEMENT

Proceeding under Section
122(h)(1) of CERCLA
42 U.S.C. § 9622(h)(1)

I. INTRODUCTION

A. This First Amendment amends the Superfund cost recovery settlement embodied in the Agreement executed July 22, 1999 by the United States Environmental Protection Agency ("EPA"), U.S. EPA Docket No. 99-06 ("Agreement"). The purpose of the Agreement was to arrange for the sale of the real property known as the Sanders Aviation Superfund Site (the "Site"), encompassing approximately 20 acres located at 7001 South Priest Drive in Tempe, Arizona, and to allocate the proceeds from the sale of the Site between EPA and the Alfred P. Sanders Trust ("Trust") and its trustees, Pauline Kortsen, Susan Livingston, and Steven A. Sanders (Trust and trustees, collectively, the "Settlers").

B. On the effective date of the Agreement, the sale of the Site was imminent, but the prospective purchaser cancelled the contract of sale and the Site was not sold. Recently, a new prospective purchaser, M & B Capital Partners, LLC, entered into a contract of sale with the Settlers on May 23, 2002, as amended on March 14, 2003, and April 14, 2003 (the "Purchase Contract"), with escrow scheduled to close no later than July 15, 2003.

1 Because the terms of the current contract of sale differ from
2 those of the prior contract, the EPA and the Settlers mutually
3 agree to enter into this First Amendment.

4 II. AMENDMENT

5 The Agreement is unchanged with the exception of Section VI,
6 "Sale of Site and Reimbursement of Response Costs," the text of
7 which is hereby replaced in its entirety with the following text:

8 A. The Settlers and EPA agree that the Site may be sold
9 under the terms and conditions set forth in the Purchase
10 Contract; provided, however, that any further amendment(s) to the
11 Purchase Contract must have the prior approval of EPA.

12 B. The Settlers have not represented that the Site is
13 suitable for residential use.

14 C. No less than 10 days prior to close of escrow, Settlers
15 shall submit to EPA for written approval appropriate escrow
16 instructions that provide that:

17 1. Upon close of escrow, the escrow agent shall cause
18 to be paid to EPA the sum of \$1,000,000. No deductions,
19 including but not limited to costs of the sale, taxes, or other
20 assessments, shall be made from this cash distribution to EPA.

21 2. Payment to EPA shall be made by Electronic Funds
22 Transfer ("EFT") in accordance with current EFT procedures to be
23 provided to the escrow agent by EPA Region IX, and shall be
24 accompanied by a statement referencing Sanders Aviation Superfund
25 Site, EPA Region IX, Site I.D. No. AV-09 and EPA Docket No. 99-06
26 for this action. At the time of payment, the Settlers shall send
27 notice that such payment has been made to:

1 William Keener
2 Office of Regional Counsel, ORC-1
3 U.S. EPA Region IX
4 75 Hawthorne Street
5 San Francisco, CA 94105

6 The total amount to be paid to EPA pursuant to Paragraph C.1 of
7 this Section shall be deposited in the EPA Hazardous Substance
8 Superfund as reimbursement for response costs incurred and paid
9 at or in connection with the Site by the EPA Hazardous Substance
10 Superfund.

11 D. The Settlers shall ensure that sufficient funds are
12 deposited in escrow prior to closing to allow for the \$1,000,000
13 payment to EPA specified in Paragraph C.1 of this Section.

14 E. Upon payment of the amount specified in Paragraph C.1
15 of this Section, EPA agrees to release the notice of Federal Lien
16 filed under Section 107(1) of CERCLA, 42 U.S.C. § 9607(1) on May
17 13, 1997 in the Recorder's Office, Maricopa County, State of
18 Arizona, and shall not release any other lien or encumbrance
19 which may exist on the Site property.

20 III. EFFECTIVE DATE

21 The effective date of this First Amendment shall be the
22 later of the date upon which EPA executes this First Amendment or
23 the date upon which the United States Department of Justice
24 executes this First Amendment.

25 IV. TERMINATION

26 If every term and condition set forth in Section II of this
27 First Amendment is not satisfied before or at the time of close
28 of escrow, the First Amendment shall be nullified and the
Purchase Agreement shall be deemed not approved by EPA. In that

1 case, the entire original Agreement, as it existed prior to this
2 Amendment, remains in full force and effect.

3
4 IT IS SO AGREED.

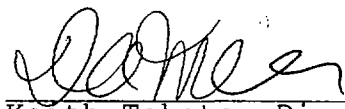
5
6 **The Alfred P. Sanders Trust**

7
8 By: _____
9 Pauline Kortsen, Trustee DATE

10 By: _____
11 Susan Livingston, Trustee DATE

12 By: _____
13 Steven A. Sanders, Trustee DATE

14
15 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

16
17 By:  _____
18 for Keith Takata, Director 23 May 2003
19 Superfund Division DATE
20 EPA Region IX

21 **UNITED STATES DEPARTMENT OF JUSTICE**

22
23 By: _____
24 Assistant Attorney General DATE
25 Environment and Natural Resources
26 Division
27 U.S. Department of Justice
28 Washington, D.C.

27 //

28 //

1 case, the entire original Agreement, as it existed prior to this
2 Amendment, remains in full force and effect.

3
4 IT IS SO AGREED.

5
6 The Alfred P. Sanders Trust

7
8 By: Pauline Kortsen, Trustee

DATE

9
10 By: Susan Livingston, Trustee

DATE

11
12 By: Steven A. Sanders, Trustee

DATE

13
14
15 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

16
17 By: Keith Takata, Director
18 Superfund Division
19 EPA Region IX

DATE

20
21 UNITED STATES DEPARTMENT OF JUSTICE

22 By: Kelly A. Johnson
23 ~~Thomas L. Sansonetti~~
24 Assistant Attorney General (Acting)
25 Environment and Natural Resources
26 Division
27 U.S. Department of Justice
28 Washington, D.C.

6/26/03
DATE

case, the entire original Agreement, as it existed prior to this
Amendment, remains in full force and effect.

IT IS SO AGREED.

The Alfred P. Sanders Trust

By: Harold Kortsen
Harold Kortsen, Trustee

5-21-03
DATE

By: Susan Livingston
Susan Livingston, Trustee

21 May 2003
DATE

By: Steven A. Sanders
Steven A. Sanders, Trustee

5-21-03
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Keith Takata
for Keith Takata, Director
Superfund Division
EPA Region IX

23 May 2003
DATE

UNITED STATES DEPARTMENT OF JUSTICE

By: _____
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C.

DATE

//
//